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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/790,469

**Applicant(s)**

MUELLER, SCOTT

**Examiner**

PAUL FISHER

**Art Unit**

3689

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Amendment received on December 3, 2010 has been acknowledged. Claims 18-25, have been previously withdrawn. Claims 1-17 and 26 are currently pending and have been considered below.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-5, 7, 12-14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burris et al. (US 2003/0208394 A1) hereafter Burris, in view of James H. Byrd: "Manage Your Inventory in Excel" (August 10, 2002) hereafter Byrd, further in view of VanHoose (4,773,011) hereafter VanHoose.**

**As per claim 1**, Burris discloses a computer-implemented method of evaluating potential sales and business opportunities relating to establishing sales by calculating metrics that include a projected sales (Page 1, paragraph [0001]; discloses that the invention is directed toward tracking and forecasting sales) comprising:

collecting operational data from the service center (retail outlet) and storing the operational data in a computer-readable memory, wherein the operational data comprises an average number of repair order requests (average sales) per time period, a number of days the service center is open per time period and identification of one or

more carlines serviced (products) (Page 1, paragraph [0003]; discloses that it is old and well known to collect various forms of data, from various sources in order to predict potential sales. Page1, paragraph [0002]; discloses that monitoring and forecasting of production and sales of a business are standard practice, Page 1, paragraph [0015]; discloses that various sources of data are obtained, Page 3, paragraph [0028]; discloses that the information can be created based on the needs of the specific user. While the information gathered is not the same as claimed, since no specific industry is mentioned in Burris, the Examiner asserts that the information itself would have been obvious to one of ordinary skill in the tire industry since it would have been obvious to know the number of requests, the hours of operation and the different products being sold. All of this information would have been needed in calculating the potential sales. Further since monitoring and forecasting are considered a standard business practice it would have been obvious to apply these concepts to any business);

calculating a the number of products to be sold per time period using one or more data processors and storing the maximum expected number in a computer-readable memory (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales. As disclosed above various information is collected to calculate maximum expected sales, in this case it is average number of products sold during a time period, which could be a year or a day. If it is a year then it would be the same as the average number of sales in a day times the number of days in operation, multiplied by the number of products sold. With tires it assumes that customers are likely to replace all four tires and the tread index which is a

percentage in this case any percentage that reflects the possible trends. An obvious percentage would be tire wear and how many customers are likely to replace their tires. This number is variable and based on the pool of customers and their driving habits as shown in the VanHoose reference below. The act itself is obvious since it is determining how many tires are needed, which is equivalent to predicting future sales as stated in Burris),

determining a sales goal for each product line, the goal being a fraction of the maximum expected number using the one or more data processors and storing the tire sales goal in a computer-readable memory (Page 3, paragraph [0032]; discloses that the system can automatically adjust a product schedule. Since the system can predict demand and forecast the trends it would obvious that the sales goal can be determined. Further since it is a fraction it could be equal to the maximum projected sales or any other portion of those sales, this sales goal can be any fraction or percentage of the maximum sales. Since they can determine demand and forecast trends it would have been obvious that the system can determine a goal or how many products they are expected to sell); and

calculating the projected sales for the retailer using the one or more data processors by adding an average retail tire price for a product associated with a carline to a charge for services involved in selling that product to generate a sum, multiplying the sum by the goal for the product line, and scaling to the time period to generate a tire sales for the product line, and summing the sales for each product line to determine a total projected sales for the retailer and storing the projected sales for the retailer in a

computer-readable memory (Calculating the projected sales) (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales. In this case it is average number of products sold during a time period, which could be a year or a day. If it is a year then it would be the same as the average number of sales times the number of days in operation, multiplied by the number of products sold with tires. This would assume that customers are likely to replace all four tires and the tread index which is a percentage in this case any percentage that reflects the possible trends such as tire wear, which as stated above would have been an obvious percentage to use tire wear and how many customers are likely to replace their tires. This number is variable and based on the pool of customers and their driving habits as shown in the VanHoose reference below. The act itself is obvious since it is determining how many tires are needed, which is equivalent to predicting future sales as stated in Burris).

Burris fails to explicitly disclose that the calculation is for maximum sales wherein the maximum expected number is equal to the average number of repair order requests per time period multiplied by the number of days the service center is open per time period multiplied by four (given that typically all four tires are replaced) multiplied by a tire tread index (which is the percentage of vehicles that are being serviced by an existing dealership service center that are in need of new tires, or the Potential customer base this is an arbitrary value or percentage), wherein the tire tread index varies according to carline and represents a percentage of cars serviced by the service center which have a tire tread depth less than a tread depth threshold;

Byrd, which discloses inventory management, teaches that it is old and well known to track and calculate Maximum sales (Page 3; teaches that part of tracking inventory is knowing sales volume like average sales, maximum sales, what is on hand, etc.. All of this information would be necessary for calculating projected sales. Byrd also discloses pages 4 and 5, that average sales and maximum sales are both calculated during a time period. What that time period is specifically (i.e. daily, weekly, monthly, yearly, etc.), remains variable since it would depend on the business and the management. As shown in Byrd, page 2, the user is expected to establish a standard ordering period. Under the assumption the users is not ordering things daily this period could be weekly, biweekly or monthly. From this it would have been obvious that the time period is variable and one of ordinary skill in the art could choose any time period they desired, such as daily, weekly, monthly, or yearly. Any time period would have been obvious to one of ordinary skill when making these calculations and simply choosing daily verses monthly or weekly involves nothing more than ordinary skill in the art. Further Byrd on page 3 recites that the system keeps and tracks Average sales per period, which is the sales during a typical ordering period. From this it would have been obvious to show what the average sales per day are which would be the sales during the operating hours of the facility. It would have been also obvious to do this daily, weekly, biweekly or monthly and determine the number of hours open during those periods. Page 4; discloses that this information is collected and stored in a computer through the use of software. Further still page 3; teaches there are safety quantity which include a risk aversion or some factor which helps assure that there is a minimum

quantity at hand. As stated in Byrd "you can't sell what you don't have" and the goal of the system is to assure you have stock on hand with out investing too much capital on inventory. When combined with Burris it would have been obvious to track and forecast maximum sales during a period of time, such as daily, weekly, monthly, etc., since this is known to ensure that the proper stock is on hand which is critical to ensure sales, since the goal is to provide the product to the customer with out having to invest too much capital. The specific mathematical calculations are merely obvious methods of mathematical manipulation and do not serve to distinguish the claimed invention from the prior art. That is to say simply because the applicant has chosen to multiple the variables, such as average sales per day multiplied by days open, doesn't change the fact that the end result is still the maximum sales as shown in the prior art. Calculating the maximum sales during a period of time is known, and to select any means of achieving this calculation would have been obvious to one having ordinary skill. The goal in the art is to determine how many products to have on hand, because in stock items are more likely to sell. To calculate total sales of what the business has sold in the past is an obvious way to determine what the possible future sales will be. One of ordinary skill would likely desire to determine what has been sold monthly, weekly or daily in hopes to best project what they need to have on hand. As described in Byrd there has to be a balance of what is in stock, too much and product sits costing the business money to store it, too little and the business loses money from potential sales. From this balance it is necessary to determine what the maximum sales would be during a time period and as part of those sales it is critical to determine how many



people would need new tires during that time period. Given that tires are a wear item it is possible and necessary to see which customers would need new tires to determine how much product to order and have on hand. This can be done by looking at invoices of the tires which have been sold and multiply this number by a factor or variable which indicates the percentage of possible customers who will need new tires as described in the VanHoose reference. This would be an obvious and necessary part of determining the demand for tires since with out determining possible wear of the item it would be impossible to determine how many of your normal customers would need tires again);

Therefore, from this teaching of Byrd, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the system and method of Burris that the calculations would include maximum sales as taught by Byrd since these calculations are considered to be basic necessities when calculating projected sales. Further these calculations are critical to ensure sales, since the goal is to provide the product to the customer with out having to invest too much capital.

While neither Burris nor Byrd disclose specifics about particular industries or specifically that these methods can be used in the tire industry, the Examiner asserts that it would have been obvious to one having ordinary skill in the sale of tires that these concepts are required when forecasting tire sales. The formula for maximum sales is the average number of service requests per day multiplied by the number of days open in a time period. This then gives you the total number of service requests in that time period or the average number of sales in a time period. That total is then multiplied by four which is the average number of tires sold and most cars have four tires thus the

maximum tires that can be sold on average is four and a wear factor applied to the customer base which is tire tread index, this is used to determine how many customers are likely to replace their tires. This is related to the percentage of repair requests that require tire replacement. If the service center only sold tires this number would be 100% if they did other maintenance work it would clearly not be the only service request and thus would be a smaller percentage. It would have been obvious to one having ordinary skill in tire sales to use this formula for determining how many customers are likely to replace their tires in a given period. As shown in Byrd the formula requires components such as average sales per period and would then determine the pool of customers likely to be repeat customers. When calculating the projected sales it would have been obvious to include the various services associated with installing a tire on a car, which include mounting and balancing these are known services when purchasing tires and would obviously have to be included in any calculation for determining the total sales or profit of selling tires. It would have also been obvious to one in the sales industry that these calculations could be for various time periods, for example could be per day, per week, per month, or per year. These are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the same results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather then waiting for it. Without calculating the future sales,

the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting money so these calculations are critical and would have been obvious to those of ordinary skill in sales.

VanHoose, which talks about a method of surveying, selecting, evaluating or servicing the tires of vehicles, teaches it is old and well known in the tire maintenance industry that the number of tires that needs to be replaced in a fleet or collection of vehicles depends on the tread depth of the individual tires (Col. 2, line 43 through Col. 3, line 26 and Col. 3, line 59- Col. 4, line 36; teach that when determining what the number of tires need to be replace it is old and well known to check the tread depth of the tires and determine what a safe level of operation is for that particular tire, when the tire is no longer deemed safe it is to be replaced. VanHoose also shows that it is known that different tires wear at different rates and different vehicles and drivers wear tires differently. Thus using the tire tread depth and the wear factor the system determines what tires need to be replaced and at what rate. Thus from this it would have been obvious to determine the pool of customers that will likely need to have their tires replace during a particular period. This is done in other parts of car maintenance as well for example oil changes have known wear rates different oils wear are different rates and times thus it is a known value in which a business own can predict when a customer is likely to return or more to the point should return to remain safe as stated in VanHoose, if the customer goes below a threshold value it is no longer safe to drive on those tires. As stated above when combined with a wear rate it is possible to determine which vehicles would require tire replacement in the future, when combined with Burris

and Byrd it would have been obvious to determine the maximum sales of tires based on the current tread depth of their customers' tires and the wear rate of those tires, by doing this they can determine what the potential number of tires that should be replaced is and thus determine the maximum tires to be sold during that period of time. For example this would be able to track all customers who purchased tires and the known wear rate given that potentially all of the customers would drive in a consistent manner the tires would have to be replaced in a known time period thus that would be the percentage of over all customers who should have their tires replaced in that time period. Therefore it would have been obvious to one having ordinary skill to track both tire depth thresholds for the tires for safety purposes and to use that information with wear rates to determine which customers would need new tires and when, thus providing a more accurate determination of when customers would need tires as well as keeping drivers safe by ensuring tires which are below a safe tread depth are replaced).

Therefore, from this teaching of VanHoose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify in the system and method of Burris and Byrd, to be used in the tire industry and to use tread depth as a measure to determine when a tire needs to be replaced as taught by VanHoose, for the purpose of accurately predicting the potential customer base of a repair facility, it would be necessary to determine how many tires would need to be replaced. By doing this the repair facility could accurately predict how many of its customers should be replacing their tires and thus how much money they can expect from this replacement.

The Examiner asserts that the type of data in this case information regarding the sale of tires is considered to be non-functional since the information itself fails to further limit the steps of the method in anyway. Furthermore, the type of information is considered to be non-functional descriptive material since it has little if anything to the step of the method. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed non-functional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d at 1384-85, 217 USPQ at 403; see also Diamond v. Diehr, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See In re Lowry, 32 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight. Such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts that the data identifying the type of information for the purchased good adds little, if anything, to the claimed structure of the system and thus does not serve as limitations on the claims to distinguish over the prior art. Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or

impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the type of information gathered does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

For example if the items for sale were computers and their corresponding parts would change. The operational data would pertain to average number of sales of computers or accessories, the hours the store would be open and the different computers for sale. The Maximum sales would depend on how many computers were sold on a given night with a set number of hours open. The index could refer to the percentage of customers who might have to have their systems upgraded or replaced. By replacing the information being gathered the steps do not change and therefore the information is non-functional. The Examiner asserts that the method is merely calculating projected sales based on average price of a product for each product line the services associated with the product and the sales goal which is based off the maximum possible sales. These principles can be adapted to any industry and are no specific to tire sales and thus the name given to the product is considered to be non-functional.

**As per claim 2**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, Burris further discloses that it is old and well known that the time period is one year (Page 1, paragraph [0004]; discloses that it is old and well known to run reports yearly).

**As per claims 3 and 13**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while the combination of Burris, Byrd and VanHoose fails to explicitly disclose that the operational data further includes an employee pay rate per hour, wherein a net profit is calculated based on the projected tire sales for the automotive service center and the employee pay rate per hour. However the Examiner asserts that this information would have been obvious to anyone working in the field of tire sales would take this information into consideration while projecting future sales, since to determine your profit you must include how much it costs to perform the service.

Further as stated in the above example given in claim 1, when selling computers the information gather could pertain to the number of new and refurbished computers the charge for diagnostic and the employee rate per hour since this information would be needed to determine the potential sales, for example if each new computer goes through a diagnostic before being sold and each system to calculate the sales one would need to calculate the price of each unit sold, and any service that would need to be performed on that system. To calculate the profits of the system the total sales would have to be determined, minus the money spent acquiring the parts and the money paid to employees. All of this information would be needed to determine projected profits.

Furthermore, the type of information is considered to be non-functional descriptive material since it has little if anything to the step of the method. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed non-functional descriptive material should be given patentable

weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d at 1384-85, 217 USPQ at 403; see also Diamond v. Diehr, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See In re Lowry, 32 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight. Such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts that the data identifying the type of information for the purchased good adds little, if anything, to the claimed structure of the system and thus does not serve as limitations on the claims to distinguish over the prior art. Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the type of information gathered does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

**As per claims 4, 5 and 14** the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while the combination of Burris, Byrd and



VanHoose fails to explicitly disclose wherein the tire tread index is no greater than 30% or is 10% to about 15%.

However the Examiner asserts that the tire tread index could be any value the value of the index does not alter or change the method steps but rather only alters the output or final result. Unlike other percentages used to describe mechanical structures, this percentage does not impose any structural limits or changes to the claim in anyway, rather it is completely dependent on the customer market and how many people need tires. The Examiner asserts that this information is considered to be non-functional descriptive material. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed non-functional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d at 1384-85, 217 USPQ at 403; see also Diamond v. Diehr, 450 U.S. 175, 191,209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See In re Lowry, 32 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight. Such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts

that the data identifying the type of information for the purchased good adds little, if anything, to the claimed structure of the system and thus does not serve as limitations on the claims to distinguish over the prior art. Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the type of information gathered does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

**As per claim 7**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while the combination of Burris, Byrd and VanHoose fails to explicitly disclose where the existing service center is affiliated with a car dealership that sells new, used, and certified pre-owned cars.

However the Examiner asserts that the fact that the service center is affiliated with a car dealership that sells new, used, and certified pre-owned cars is specific to the tire industry but fails to limit the steps of the method in anyway. The Examiner asserts that this information is considered to be non-functional descriptive material. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed non-functional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d at 1384-85, 217 USPQ at 403; see also Diamond v. Diehr, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to

descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight. Such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts that the data identifying the type of information for the purchased good adds little, if anything, to the claimed structure of the system and thus does not serve as limitations on the claims to distinguish over the prior art. Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the type of information gathered does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

**As per claim 12**, Burris discloses a computer-implemented method of evaluating potential sales and business opportunities relating to establishing sales by calculating metric that include a business opportunity metric (Page 1, paragraph [0001]; discloses that the invention is directed toward tracking and forecasting sales) comprising:

collecting operational data from the service center (retail outlet) and storing the operational data in a computer-readable memory, wherein the operational data

comprises an average number of repair order requests (average sales) per time period, a number of days the service center is open per time period, and an identification of one or more carlines serviced (products) (Page 1, paragraph [0003]; discloses that it is old and well known to collect various forms of data, from various sources in order to predict potential sales. Page1, paragraph [0002]; discloses that monitoring and forecasting of production and sales of a business are standard practice, Page 1, paragraph [0015]; discloses that various sources of data are obtained, Page 3, paragraph [0028]; discloses that the information can be created based on the needs of the specific user. While the information gathered is not the same as claimed, since no specific industry is mentioned in Burris, the Examiner asserts that the information itself would have been obvious to one of ordinary skill in the tire industry since it would have been obvious to know the number of requests, the hours of operation and the different products being sold. All of this information would have been needed in calculating the potential sales. Further since monitoring and forecasting are considered a standard business practice it would have been obvious to apply these concepts to any business);

calculating a the number of products to be sold per time period using one or more data processors and storing the maximum expected number in a computer-readable memory (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales. As disclosed above various information is collected to calculate maximum expected sales, in this case it is average number of products sold during a time period, which could be a year or a day. If it is a year then it would be the same as the average number of sales in a day times the

number of days in operation, multiplied by the number of products sold. With tires it assumes that customers are likely to replace all four tires and the tread index which is a percentage in this case any percentage that reflects the possible trends. An obvious percentage would be tire wear and how many customers are likely to replace their tires. This number is variable and based on the pool of customers and their driving habits as shown in the VanHoose reference below. The act itself is obvious since it is determining how many tires are needed, which is equivalent to predicting future sales as stated in Burris),

determining a sales goal for each product line, the goal being a fraction of the maximum expected number using the one or more data processors and storing the tire sales goal in a computer-readable memory (Page 3, paragraph [0032]; discloses that the system can automatically adjust a product schedule. Since the system can predict demand and forecast the trends it would obvious that the sales goal can be determined. Further since it is a fraction it could be equal to the maximum projected sales or any other portion of those sales, this sales goal can be any fraction or percentage of the maximum sales. Since they can determine demand and forecast trends it would have been obvious that the system can determine a goal or how many products they are expected to sell); and

calculating the projected sales for the retailer using the one or more data processors by adding an average retail tire price for a product associated with a carline to a charge for services involved in selling that product to generate sum, multiplying the sum by the goal for the product line, and scaling to the time period to generate a tire

sales for the product line, and summing the sales for each product line to determine a total projected sales for the retailer and storing the projected sales for the retailer in a computer-readable memory (Calculating the projected sales) (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales. In this case it is average number of products sold during a time period, which could be a year or a day. If it is a year then it would be the same as the average number of sales times the number of days in operation, multiplied by the number of products sold with tires. This would assume that customers are likely to replace all four tires and the tread index which is a percentage in this case any percentage that reflects the possible trends such as tire wear, which as stated above would have been an obvious percentage to use tire wear and how many customers are likely to replace their tires. This number is variable and based on the pool of customers and their driving habits as shown in the VanHoose reference below. The act itself is obvious since it is determining how many tires are needed, which is equivalent to predicting future sales as stated in Burris).

calculating a certified pre-owned savings associated with tire sales using the one or more data processors and storing the projected tire sales in a computer-readable memory, wherein the certified pre-owned savings is calculated by comparing a cost associated with outsourcing replacement of certified pre-owned car tires with a cost associated with internally supplying new tires to the certified pre-owned cars (Page 2, paragraph [0025]; discloses that the invention can forecast information, it would be obvious that this information could be saving about different possible outcomes); and

calculating the business opportunity metric using the one or more data processors and storing the business opportunity metric in a computer-readable memory by adding together the total projected sales and the savings (Page 2, paragraph [0025]; discloses that the invention can forecast information, it would have been obvious to calculate different scenarios to help determine what is the best course of action in a new venture such as determining the savings associated with one choice compared to another the information itself being about a tire sales adds little if anything to claimed method).

Burris fails to explicitly disclose that the calculation is for maximum sales wherein the maximum expected number is equal to the average number of repair order requests per time period multiplied by the number of days the service center is open per time period multiplied by four (given that typically all four tires are replaced) multiplied by a tire tread index (which is the percentage of vehicles that are being serviced by an existing dealership service center that are in need of new tires, or the Potential customer base this is an arbitrary value or percentage), wherein the tire tread index varies according to carline and represents a percentage of cars serviced by the service center which have a tire tread depth less than a tread depth threshold;

Byrd, which discloses inventory management, teaches that it is old and well known to track and calculate Maximum sales (Page 3; teaches that part of tracking inventory is knowing sales volume like average sales, maximum sales, what is on hand, etc.. All of this information would be necessary for calculating projected sales. Byrd also discloses pages 4 and 5, that average sales and maximum sales are both calculated

during a time period. What that time period is specifically (i.e. daily, weekly, monthly, yearly, etc.), remains variable since it would depend on the business and the management. As shown in Byrd, page 2, the user is expected to establish a standard ordering period. Under the assumption the users is not ordering things daily this period could be weekly, biweekly or monthly. From this it would have been obvious that the time period is variable and one of ordinary skill in the art could choose any time period they desired, such as daily, weekly, monthly, or yearly. Any time period would have been obvious to one of ordinary skill when making these calculations and simply choosing daily verses monthly or weekly involves nothing more than ordinary skill in the art. Further Byrd on page 3 recites that the system keeps and tracks Average sales per period, which is the sales during a typical ordering period. From this it would have been obvious to show what the average sales per day are which would be the sales during the operating hours of the facility. It would have been also obvious to do this daily, weekly, biweekly or monthly and determine the number of hours open during those periods. Page 4; discloses that this information is collected and stored in a computer through the use of software. Further still page 3; teaches there are safety quantity which include a risk aversion or some factor which helps assure that there is a minimum quantity at hand. As stated in Byrd "you can't sell what you don't have" and the goal of the system is to assure you have stock on hand with out investing too much capital on inventory. When combined with Burris it would have been obvious to track and forecast maximum sales during a period of time, such as daily, weekly, monthly, etc., since this is known to ensure that the proper stock is on hand which is critical to ensure sales,



since the goal is to provide the product to the customer with out having to invest too much capital. The specific mathematical calculations are merely obvious methods of mathematical manipulation and do not serve to distinguish the claimed invention from the prior art. That is to say simply because the applicant has chosen to multiple the variables, such as average sales per day multiplied by days open, doesn't change the fact that the end result is still the maximum sales as shown in the prior art. Calculating the maximum sales during a period of time is known, and to select any means of achieving this calculation would have been obvious to one having ordinary skill. The goal in the art is to determine how many products to have on hand, because in stock items are more likely to sell. To calculate total sales of what the business has sold in the past is an obvious way to determine what the possible future sales will be. One of ordinary skill would likely desire to determine what has been sold monthly, weekly or daily in hopes to best project what they need to have on hand. As described in Byrd there has to be a balance of what is in stock, too much and product sits costing the business money to store it, too little and the business loses money from potential sales. From this balance it is necessary to determine what the maximum sales would be during a time period and as part of those sales it is critical to determine how many people would need new tires during that time period. Given that tires are a wear item it is possible and necessary to see which customers would need new tires to determine how much product to order and have on hand. This can be done by looking at invoices of the tires which have been sold and multiply this number by a factor or variable which indicates the percentage of possible customers who will need new tires as described in

the VanHoose reference. This would be an obvious and necessary part of determining the demand for tires since with out determining possible wear of the item it would be impossible to determine how many of your normal customers would need tires again);

Therefore, from this teaching of Byrd, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the system and method of Burris that the calculations would include maximum sales as taught by Byrd since these calculations are considered to be basic necessities when calculating projected sales. Further these calculations are critical to ensure sales, since the goal is to provide the product to the customer with out having to invest too much capital.

While neither Burris nor Byrd disclose specifics about particular industries or specifically that these methods can be used in the tire industry, the Examiner asserts that it would have been obvious to one having ordinary skill in the sale of tires that these concepts are required when forecasting tire sales. The formula for maximum sales is the average number of service requests per day multiplied by the number of days open in a time period. This then gives you the total number of service requests in that time period or the average number of sales in a time period. That total is then multiplied by four which is the average number of tires sold and most cars have four tires thus the maximum tires that can be sold on average is four and a wear factor applied to the customer base which is tire tread index, this is used to determine how many customers are likely to replace their tires. This is related to the percentage of repair requests that require tire replacement. If the service center only sold tires this number would be 100% if they did other maintenance work it would clearly not be the only service request and

thus would be a smaller percentage. It would have been obvious to one having ordinary skill in tire sales to use this formula for determining how many customers are likely to replace their tires in a given period. As shown in Byrd the formula requires components such as average sales per period and would then determine the pool of customers likely to be repeat customers. When calculating the projected sales it would have been obvious to include the various services associated with installing a tire on a car, which include mounting and balancing these are known services when purchasing tires and would obviously have to be included in any calculation for determining the total sales or profit of selling tires. It would have also been obvious to one in the sales industry that these calculations could be for various time periods, for example could be per day, per week, per month, or per year. These are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the same results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather than waiting for it. Without calculating the future sales, the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting money so these calculations are critical and would have been obvious to those of ordinary skill in sales.

VanHoose, which talks about a method of surveying, selecting, evaluating or servicing the tires of vehicles, teaches it is old and well known in the tire maintenance

industry that the number of tires that needs to be replaced in a fleet or collection of vehicles depends on the tread depth of the individual tires (Col. 2, line 43 through Col. 3, line 26 and Col. 3, line 59- Col. 4, line 36; teach that when determining what the number of tires need to be replace it is old and well known to check the tread depth of the tires and determine what a safe level of operation is for that particular tire, when the tire is no longer deemed safe it is to be replaced. VanHoose also shows that it is known that different tires wear at different rates and different vehicles and drivers wear tires differently. Thus using the tire tread depth and the wear factor the system determines what tires need to be replaced and at what rate. Thus from this it would have been obvious to determine the pool of customers that will likely need to have their tires replace during a particular period. This is done in other parts of car maintenance as well for example oil changes have known wear rates different oils wear are different rates and times thus it is a known value in which a business own can predict when a customer is likely to return or more to the point should return to remain safe as stated in VanHoose, if the customer goes below a threshold value it is no longer safe to drive on those tires. As stated above when combined with a wear rate it is possible to determine which vehicles would require tire replacement in the future, when combined with Burris and Byrd it would have been obvious to determine the maximum sales of tires based on the current tread depth of their customers' tires and the wear rate of those tires, by doing this they can determine what the potential number of tires that should be replaced is and thus determine the maximum tires to be sold during that period of time. For example this would be able to track all customers who purchased tires and the known

wear rate given that potentially all of the customers would drive in a consistent manner the tires would have to be replaced in a known time period thus that would be the percentage of over all customers who should have their tires replaced in that time period. Therefore it would have been obvious to one having ordinary skill to track both tire depth thresholds for the tires for safety purposes and to use that information with wear rates to determine which customers would need new tires and when, thus providing a more accurate determination of when customers would need tires as well as keeping drivers safe by ensuring tires which are below a safe tread depth are replaced).

Therefore, from this teaching of VanHoose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify in the system and method of Burris and Byrd, to be used in the tire industry and to use tread depth as a measure to determine when a tire needs to be replaced as taught by VanHoose, for the purpose of accurately predicting the potential customer base of a repair facility, it would be necessary to determine how many tires would need to be replaced. By doing this the repair facility could accurately predict how many of its customers should be replacing their tires and thus how much money they can expect from this replacement.

The Examiner asserts that the type of data in this case information regarding the sale of tires is considered to be non-functional since the information itself fails to further limit the steps of the method in anyway. Furthermore, the type of information is considered to be non-functional descriptive material since it has little if anything to the step of the method. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed non-functional descriptive material

should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; see also *Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight. Such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts that the data identifying the type of information for the purchased good adds little, if anything, to the claimed structure of the system and thus does not serve as limitations on the claims to distinguish over the prior art. Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the type of information gathered does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

For example if the items for sale were computers and their corresponding parts would change. The operational data would pertain to average number of sales of

computers or accessories, the hours the store would be open and the different computers for sale. The Maximum sales would depend on how many computers were sold on a given night with a set number of hours open. The index could refer to the percentage of customers who might night to have their systems upgraded or replaced. By replacing the information being gathered the steps do not change and therefore the information is non-functional. The savings could come from outsourcing repairs to refurbished computers which could have out dated elements and require more investment then current systems.

**As per claim 26**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, VanHoose further teaches wherein the tire tread index for a carline (products that might need to be replaced) by measuring a tread depth for a plurality of cars in the carline, determining a number of the plurality of cars having a tire tread depth less than a tread depth threshold, and determining the tire tread index based on the number of cars having a tire tread depth less than the tread depth and the number of cars in the plurality of cars in the carline (Col. 2, line 43 through Col. 3, line 26 and Col. 3, line 59- Col. 4, line 36; teach that when determining what the number of tires need to be replace it is old and well known to check the tread depth of the tires and determine what a safe level of operation is for that particular tire, when the tire is no longer deemed safe it is to be replaced).

4. **Claims 6, 8-11, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burris et al. (US 2003/0208394 A1) hereafter Burris, in view of**

**Byrd, further in view of VanHoose (4,773,011) hereafter VanHoose, further in view of Examiner's Official Notice.**

**As per claim 6 and 15**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while Burris does disclose making various calculations based on the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales). However, it fails to explicitly disclose calculating total savings, net profit, warranty costs, capital investment, return on investment, and total equipment costs using the projected tire sales for the automotive service center.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations themselves are not novel. It is common for a company or business to calculate total savings, net profit, warranty costs, capital investment, return on investment, and total equipment costs as part of doing business. It is often required to calculate net profit for example to determine if the venture will be a profitable one, or return on investment to determine if the investment is sound and if investors will back the venture.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they are making a sound financial decision.



**As per claims 8 and 17**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while Burris does disclose making various calculations based on the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales). However, it fails to explicitly disclose calculating of capital investment cost, wherein the capital investment cost is determined by adding a cost of purchasing tire installation equipment and an inventory investment cost, wherein the inventory investment cost is calculated by dividing the projected tire sales by the inventory turn goal and multiplying by an average wholesale tire price associated with a carline.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations would include such calculations such as capital investment cost. A company would do this sort of calculation to determine what the investment is for the product and to ensure they can afford to take on these new costs.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they are making a sound financial decision.

**As per claim 9**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, Burris does disclose making various calculations based on

the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales). Byrd teaches tracking status of inventory (Page 5, under the status heading; teaches that inventory is tracked in various ways).

However the combination fails to explicitly disclose including the calculating of an inventory space requirement.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations would include such calculations such as inventory space requirements. A company would do this sort of calculation to determine what the inventory space requirements are so they don't have goods they can't stock.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they are making a sound financial decision and not taking on obligations they can't maintain.

**As per claim 10**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, Burris does disclose making various calculations based on the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales).

However the combination fails to explicitly disclose including the calculating a cost of satisfying warranty claims wherein the cost is determined by multiplying a number of new annual car sales for a dealership by a warranty factor or number of warranty claims.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations would include such calculations such as cost of satisfying warranty claims. A company would do this sort of calculation to determine what the cost of fulfilling warranties would be, given that the information is directed toward tires it is old and well know that tires come with warranties and thus would have a related cost associated with fulfilling those warranties.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they are making a sound financial decision and not taking on obligations they can't maintain.

**As per claim 11**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, Burris does disclose making various calculations based on the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales).

However the combination fails to explicitly disclose including the calculating a loyalty factor, wherein the loyalty factor is determined by dividing an annual tires sold by a loyalty variable.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations would include such calculations such as a loyalty factor. A company would do this sort of calculation to determine what the loyalty of their customers would be based on how often they return to the service center for maintenance.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they maintain a good relationship with their customers and ensure that they have future sales.

**As per claim 16**, the combination of Burris, Byrd and VanHoose teaches the above-enclosed invention, while Burris does disclose making various calculations based on the information being gathered (Page 2, paragraph [0025]; discloses that the invention can forecast information such as future sales or projected sales).

However fails to explicitly disclose wherein the cost associated with internally supplying new tires is calculated by multiplying a number of annual certified pre-owned cars sold by a pre-owned car service goal and adding labor costs for replacing tires, and

wherein the cost associated with outsourcing the replacement is calculated using an average retail tire price.

However, the Examiner is taking official notice that it is old and well known to make various calculations and that the calculations would include such calculations such as a comparison between in house costs and outsourcing a job. The details of this job would depend on the industry and the products being sold. A business dealing in tire resale would to consider the number of possible tires they would have to replace as well as the cost of having them installed meaning how much they would have to pay workers. These calculations would have to be done simply to know if it is cost effective to offer this service while still maintaining a competitive cost for the service. It is often the procedure of a company to evaluate various options in order to discover the most cost effective and profitable solution.

Therefore, from this teaching of Examiner's Official Notice, it would have been obvious to one skilled in the art at the time the invention to include in the system and method provided by the combination of Burris and Byrd with the basic calculations taught by the Examiner's Official Notice since these calculations are considered to be basic calculations that all businesses perform to ensure that they maintain to evaluate various options in order to discover the most cost effective and profitable solution.

### ***Response to Arguments***

5. Applicant's arguments filed December 3, 2010 have been fully considered but they are not persuasive.

6. In response to the applicant's argument that, "There are no details in this portion of Burris detailing a mechanism for calculating these reports at all, let alone a teaching of the detailed calculating step of claim 1, Burris at most says that a future sales report may be calculated," the Examiner respectfully disagrees. As discussed above Burris shows that monitoring and forecasting are considered to be standard practice, in other words it would have been obvious to one having ordinary skill that these calculations take place. Further Burris alone was not used to reject this limitation. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner asserts that when combined as done in the rejection the references teach that to calculate the maximum sales in any manner would have been obvious and these are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the sale results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather then waiting for it. Without calculating the future sales, the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting

money so these calculations are critical and would have been obvious to those of ordinary skill in sales.

7. In response to the applicant's argument that, "Byrd never discusses how to estimate the maximum expected sales at all, let alone teaching detailed steps of calculating maximum sales," the Examiner respectfully disagrees. As discussed above the applicant appears to be arguing the references separately. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner asserts that when combined as done in the rejection the references teach that to calculate the maximum sales in any manner would have been obvious and these are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the same results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather then waiting for it. Without calculating the future sales, the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting money so these calculations are critical and would have been obvious to those of ordinary skill in sales.

8. In response to the applicant's argument that, "Nowhere in VanHoose does it disclose a specific tire tread index as required by claim 1," the Examiner respectfully disagrees. VanHoose shows both a tire tread depth as well as wear factors and ensuring that the tires are at a safe level of operation, thus they can determine which tires are not and when combined this information would show which customers need to have their tires replaced and ultimate show what the potential sales are. Further VanHoose shows the data is tracked respect to each tire type; the size of the tire, the brand type, the cost of the tire, the wear rates and the initial tread depth of each type. Thus it tracks which tires would need to be replaced and it varies by carline which would have different brands, sizes and wear rates. The Examiner asserts that when combined as done in the rejection the references teach that to calculate the maximum sales in any manner would have been obvious and these are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the same results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather then waiting for it. Without calculating the future sales, the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting money so these calculations are critical and would have been obvious to those of ordinary skill in sales.



9. In response to the applicant's argument that, "Claim 1 requires a specific method of calculation the maximum expected number of tires to be sold that the maximum expected number is equal to the average number of repair order requests per day multiplied by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index," the Examiner respectfully disagrees that the references when combined fail to show that this limitation is obvious to one having ordinary skill in the art. The Examiner asserts that when combined as done in the rejection the references teach that to calculate the maximum sales in any manner would have been obvious and these are simple math calculations which are as described in Byrd required in properly forecasting a businesses sales, while these calculations can be done using various mathematical techniques, they would arrive at the same results which is predicting the future sales, which as shown in Byrd is critical in ensuring that the proper inventory is stocked, since as stated in Byrd with out this information sales are likely to be effected since a customer is more likely to buy something if it is in stock rather then waiting for it. Without calculating the future sales, the business owner would not be aware of what should be stocked and could end up spending too little in stocking or not enough thus wasting money so these calculations are critical and would have been obvious to those of ordinary skill in sales. Further as shown by the applicant there are other obvious means of calculating the sales any of which would have been obvious to one having ordinary skill and would all achieve the same result which is calculating the maximum sales and potential profit. The applicant has failed to provide any evidence that the mathematical manipulation is not an obvious form of calculating a

known necessary value in what is referred to as a standard business practice. As such the method in which value is calculated is considered to be obvious and does not server to distinguish the claimed invention from the prior art. Therefore the rejections have been maintained.

10. In response to the applicant's arguments regarding claims 4, 5, and 14, particularly that weight must be given to the ranges which have been recited, the Examiner respectfully disagrees. As shown above unlike ranges which require structural limitations or changes to the way a process is performed or carried out, the ranges in these claims do not alter or change the structure or process in anyway. Further as shown in the new reference VanHoose these ranges could change depending on the conditions of the cars which are being serviced, that is to say if the cars progressively have worse tread depth the index will change accordingly. This is to say that this variable is not a set variable but rather changes depending on the vehicles it is applied to. Thus since it is variable it can not change the process or structure but rather only the value which is being sought after in the first place. For these reasons the rejections have been maintained.

11. All rejections made towards the dependent claims are maintained due to the lack of a reply by the applicant in regards to distinctly and specifically point out the supposed errors in the Examiner's action in the prior Office Action (37 CFR 1.111). The Examiner asserts that the applicant only argues that the dependent claims should be allowable because the independent claims are unobvious and patentable over Burris in view of Byrd, and VanHoose.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL FISHER whose telephone number is (571)270-5097. The examiner can normally be reached on Mon/Fri [8am/4:30pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. R. F./  
Examiner, Art Unit 3689  
/Dennis Ruhl/  
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